




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

AUG 24 2017

OFFICE OF GENERAL COUNSEL

MEMORANDUM

SUBJECT: Approval of Request for Charter Service from Denver to Durango

FROM: Kevin S. Minoli 
Acting General Counsel
Office of General Counsel

TO: Kevin Chmielewski
Deputy Chief of Staff for Operations
Office of the Administrator

This memorandum responds to your request for written approval for the Administrator and three EPA employees to use a charter service to fly from Denver to Durango, CO on August 4, 2017. I have concluded that the circumstances you have provided in your request satisfy the regulations and policies governing EPA's use of charter aircraft. I am therefore, memorializing my prior verbal approval of your request.

On August 4, 2017, the Administrator and his staff were scheduled to attend a meeting at Gold King Mine, near Durango, to discuss the mine spill with the Colorado Congressional delegation, the Colorado Governor, key community leaders, and stakeholders. The Administrator was scheduled to take a commercial flight from Denver at 9:10 a.m. that would arrive in Durango at 11 a.m. When the Administrator and his staff arrived at the airport in Denver for their departure to Durango, they learned that the flight had been delayed. The delay pushed the flight's arrival time beyond the Administrator's scheduled meeting time at Gold King Mine.

Pursuant to OMB Circular A-126, in emergency situations, EPA's General Counsel or Principal General Counsel may give prior verbal approval of the Agency's use of a charter service and after-the-fact written certification. In this case, the Administrator urgently needed a mode of transportation to make his meeting and did not have sufficient time to request formal approval from OGC. I was contacted by the EPA's Chief of Staff, Ryan Jackson, to provide verbal approval of the use of a private charter service. Based on the facts presented to me, I gave my verbal approval for the Agency's use of a charter service, which I believed qualified as "other official travel" under GSA's authorized uses of charter aircraft. Ryan Jackson agreed to deliver the appropriate paperwork to OGC the following week so I could provide my formal approval. This information was documented in an email dated August 4, 2017.

An agency's use of charter services is governed by OMB Circular A-126 and 41 CFR §§ 102.33, 301-10.260 –10.266. Under these policies and procedures, one of the three situations in which OGC may approve EPA's use of a charter service is for "other official travel." To meet this test, EPA must determine 1) the travel is for the purpose of conducting agency business and 2) no commercial service is reasonably available to effectively fulfill EPA's requirements or that the actual cost of using a chartered aircraft is less than the cost of commercial airline service. Here, the travel satisfies the criteria of "other official travel." As stated in your request, the purpose of the Administrator's visit was to meet with state representatives and stakeholders to discuss EPA's response to the Gold King Mine spill. You also state in your request that there were no alternative commercial flights that would allow the Administrator and his team to make the meeting on time.

Based on information provided to me, I am formally authorizing EPA's use of a charter service from August 4, 2017 from Denver to Durango. If you have any questions regarding this memorandum, please do not hesitate to contact me (202-564-8040) or Stephanie Rich (202-564-4963).

CORRESPONDENCE ROUTING AND TRANSMITTAL SLIP**Routed From**

printed 08/24/2017 03:09:47 PM

Law Office

Originator

Date Due

ID Number

CRFLO

Stephanie Rich

09/01/2017

OGC-3088

Action Requested☐ Concurrence by GC☐ Concurrence by Front Office ☐ FYI☐ Signature by GC☐ Signature by Front Office ☐ Other**Routed To**

Law Office

Approver

Approved?

1. Front Office

Shaun Trudeau



YES 08/24/2017

02:18:40 PM

2. Front Office

Kevin Minoli

3.

4.

5.

6.

7.

8.

Package Information

Document Type

Memorandum

Case Name/Subject

Case or File Number

Approval of Request for Charter Service from Denver to Durango

N/A

Comments from the ORIGINATOR

MEMORANDUM

SUBJECT: Justification for Charter Services for the Administrator

**FROM: Kevin Chmielewski,
Deputy Chief of Staff for Operations**

**TO: Kenneth Redden,
Acting Associate General Counsel,
Civil Rights and Finance Law Office**

This memorandum requests that the Office of General Counsel approve the use of charter services for the Administrator under the circumstances set forth below. If you have any questions regarding this matter, please contact me at 202-564-3140 or Millan Hupp of my staff at 202-564-1748.

JUSTIFICATION FOR AIRPLANE CHARTER IN COLORADO

The Administrator and other EPA employees visited Gold King Mine in Durango, Colorado. The following employees are traveled via charter from Denver to Durango on August 4th:

E. Scott Pruitt, Administrator
Pasquale Perrotta, Protective Security Detail
Lincoln Ferguson, Senior Advisor to the Administrator
Amy Graham, Deputy Associate Administrator, OPA

PURPOSE

Administrator was scheduled to be at Gold King Mine for a tour and meeting beginning at 11AM. His flight was scheduled to land in Durango (1 hour, 45 min) from Gold King at 9:10AM. The traveling EPA staff did not learn of the delay until arrival at the airport in Denver that morning. The flight continued to be delayed, all the while they searched for alternative options. None became available and with no indication for an immediate depart for the already scheduled commercial flight, the decision was made to pursue a charter plane in order to fulfill the mission.

Therefore, the Administrator departed from Denver, CO on August 4th, 2017 via a charter aircraft to Durango, CO to make a mission critical meeting at Gold King Mine. This meeting involved the Colorado Congressional delegation, the Governor, and key community leaders and stakeholders, and it was essential that the Administrator attend. The Administrator's original commercial flight was delayed beyond the timeframe for the scheduled meeting. Thus only allowing for the option to use a charter aircraft.

From: Minoli, Kevin
To: Redden, Kenneth; Askew, Wendel; Talbert-Duarte, Angelia; Rich, Stephanie; Fugh, Justina
Cc: Reeder, John; Outside Counsel Ex. 5 - Personal Privacy Davis, Gail; Packard, Elise
Subject: Update on Administrator's Travel Today
Date: Friday, August 04, 2017 12:58:12 PM

All- I wanted to provide an update on the Administrator's travel situation today. As those of you who are in the office know, the flight the Administrator intended to take from Denver to Durango today was delayed to such a degree that he would miss a mission critical meeting at Gold King Mine. That meeting involved the Colorado Congressional delegation, the Governor, and key community leaders and stakeholders, and it was essential that the Administrator attend. Based upon my conversation with Ryan Jackson, there were no other available flights from Denver to Durango that would have worked with the scheduled meeting. People also looked into flights from airports near to Denver into Durango or other locations near Gold King Mine. While there was one potential alternative identified that had one seat available (and the airline may have gone as far as to reserve that seat in case we determined it would meet the travel needs and requirements), Ryan's understanding from the security detail was that there was not any additional seat for a Special Agent to accompany the Administrator and, therefore, that flight did not meet the travel and security needs. Similarly, there was only one seat available on a plane with the Governor, so without the Governor removing someone else from the trip that was not an option either. After calling and consulting with me, there was a decision to secure a flight with a commercially-available charter service (<http://mayoaviation.com/charter/>). Ryan relayed that the cost was approximately \$5200. Ryan will deliver all of the paperwork to the AO team and us on Monday when they return to the office. At that point will we document the oral consultation and conclusion more formally.

AO folks, I cc'd you so everyone had awareness of where things stand from my perspective. If you want to talk through any aspect of this understanding today, please give me a call.

Thanks, Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040